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9 Attorneys for Plaintiff
BitTorrent, Inc.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

14 BITTORRENT, INC., a California
corporation,

15 Plaintiff,

16 v.

17 BITTORRENT MARKETING GMBH, a
18 limited liability company organized under the
laws of Germany,

19 Defendant.

Case No. CV 12-2525 EJD

**DECLARATION OF JOHN PAUL OLEKSIUK
IN SUPPORT OF REQUEST FOR ENTRY OF
DEFAULT**

21
22 I, John Paul Oleksiuk, declare as follows:

23 1. I am an attorney with the law firm of Cooley LLP, counsel in this action for
24 Plaintiff BitTorrent, Inc. (“BitTorrent” or “Plaintiff”). I have personal knowledge of the facts
25 contained within this declaration, and if called as a witness, could testify competently to the
26 matters contained herein. I make this declaration in support of Plaintiff’s Request for Entry for
27 Default against Defendant BitTorrent Marketing GmbH (“Defendant”).

28 2. The complaint in this action was filed on May 16, 2012. The following day,

1 Cooley LLP contacted Legal Language Services (“LLS”) to begin translating the complaint and
 2 accompanying materials into German and to take the necessary steps to effect service of process
 3 in Germany on Defendant under the provisions of the *Hague Convention of 15 November 1965 on*
 4 *the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (the
 5 “Hague Convention”).

6 **3.** BitTorrent attempted to complete service upon Defendant at its registered address
 7 with a request under the Hague Convention to the relevant Central Authority in Germany three
 8 times since the Complaint was filed. LLS informed me that each request under the Hague
 9 Convention for service was the subject of an appeal by Defendant at the relevant court in
 10 Germany. LLS further informed me that each appeal was refused, and the German court hearing
 11 the appeal decided that service should be completed.

12 **4.** LLS informed me that service was not effected in each case that BitTorrent
 13 attempted to complete service with a request under the Hague Convention because Defendant
 14 changed its address while the request under the Hague Convention was pending. LLS has
 15 informed me that Defendant has now had no fewer than four different registered addresses since
 16 the start of this lawsuit, and I have confirmed each address change online by viewing the
 17 information available on the *Common register portal of the German federal states* available at
 18 https://www.handelsregister.de/rp_web/welcome.do?language=en (the “Online Portal”). On
 19 February 28, 2014, I was informed by LLS that Defendant’s most recent registered address is
 20 Dornhofstraße 34, 63263 Neu-Isenburg, Germany.

21 **5.** On October 29, 2013, the Court ordered that Plaintiff may effect substituted
 22 service personally upon German counsel for Defendant, Christoph Hoppe, of the Summons and
 23 Complaint, and other related court documents, in both English and German (collectively, the
 24 “Initiating Documents”), at the known address for Mr. Hoppe: Kreuzkamp & Partner,
 25 Ludenberger Straße 1A, 40629 Düsseldorf Germany. The Court further ordered that Defendant
 26 shall answer or otherwise move in response to the Complaint within twenty-one (21) days of
 27 delivery of the Summons and Complaint and related documents to German counsel Christoph
 28 Hoppe. *See* Order on Bittorrent, Inc.’s Administrative Motion for Substituted Service of

1 Summons and Complaint, Dkt. 28 (“Order Permitting Substituted Service”).

2 **6.** Though the Order Permitting Substituted Service did not require that delivery of
3 the Initiating Documents to Mr. Hoppe occur under Hague Convention, Plaintiff first attempted to
4 complete substituted service by delivery of the Initiating Documents to Hoppe using the Hague
5 Convention procedures. By request to the Central Authority for Düsseldorf dated November 5,
6 2013, Plaintiff requested service under the Hague Convention of the Initiating Documents to
7 Defendant via delivery to Mr. Hoppe.

8 **7.** On December 4, 2013, the Court granted Plaintiff’s Administrative Motion for an
9 Extension of Time to Complete Service of Summons and Complaint and Extension of Associated
10 Case Management Deadlines and ordered that Plaintiff shall have until March 2, 2014 to
11 complete service of the Initiating Documents. *See* Order on BitTorrent, Inc.’s Administrative
12 Motion for Extension of Time to Complete Service of Summons and Complaint and Extension of
13 Associated Case Management Deadlines, Dkt. 31 (“Order Permitting Extension to Complete
14 Service”).

15 **8.** On January 3, 2014, I was informed by LLS that the Central Authority of
16 Düsseldorf declined to arrange for delivery of the Initiating Documents to Hoppe because he had
17 not made an appearance for Defendant in this case.

18 **9.** On January 17, 2014, staff at Cooley LLP sent the Initiating Documents, via
19 FedEx Overnight Mail, to Mr. Hoppe at the address listed above in Paragraph 5 of this declaration
20 in accordance with the Order Permitting Substituted Service. *See* Proof of Service, Dkt. 32.

21 **10.** FedEx provided Cooley LLP with written confirmation that the FedEx package
22 containing the Initiating Documents was received by the receptionist at the front desk on January
23 20, 2014 at the address listed above in Paragraph 5 of this declaration, and said package was
24 signed for by M. Schreiner. The Proof of Service and Proof of Delivery were previously filed
25 with the Court. *See* Dkt. 32. The Proof of Service and Proof of Delivery are also attached hereto
26 as Exhibit 1.

27 **11.** On January 21, 2014, the Initiating Documents were also emailed by staff at
28 Cooley LLP to Christoph Hoppe at hoppe@kreuzhamp.com. *See* Proof of Service, Dkt. 32.

12. Pursuant to Rule 12(a)(1) of the Federal Rules of Civil Procedure, and by Order of this Court, Defendant's responsive pleading was due 21 days following delivery of the Initiating Documents. *See* Dkt. 28 (Order Permitting Substituted Service) and Dkt. 31 (Order Permitting Extension to Complete Service). That time period for Defendant to respond expired on February 10, 2014.

13. To date, Defendant has not filed an answer or other responsive pleading or otherwise appeared in this case.

14. Defendant, being a corporate entity, is not a minor, an incompetent person, or in the military service.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 8, 2014 in Baltimore, Maryland.

/s/ John Paul Oleksiuk
John Paul Oleksiuk

EXHIBIT 1

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

BitTorrent, Inc.,

Plaintiff

v.

BitTorrent Marketing GmbH,

Defendant

Civil Action No. CV12-2525 (EJD)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

BitTorrent Marketing GmbH
 Schierholzstrasse 27
 30655 Hannover
 Germany

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

John W. Crittenden, Esq.
 Cooley LLP
 101 California Street, 5th Floor
 San Francisco, CA 94111-5800

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

RICHARD W. WIEKING

CLERK OF COURT

Gordana Macic

Signature of Clerk or Deputy Clerk

Date: OCT 02 2013

COPY

PROOF OF SERVICE
(FRCP 5)

I am a citizen of the United States and a resident of the State of California. I am employed in San Francisco County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is Cooley LLP, 101 California Street, 5th Floor, San Francisco, California 94111-5800. On the dates set forth below I served the documents described below in the manner described below:

Certified translations from English to German by Legal Language Services, and original English-language versions of the following documents:

1. Summons in a Civil Action filed 10/2/2013;
2. Civil Cover Sheet dated 05/16/2012;
3. Complaint with Exhibits A-C filed 05/16/2012;
4. Order on BitTorrent, Inc.'s Administrative Motion to Continue Date of Initial Case Management Conference and Associated Deadlines filed 06/18/2012 (ECF #7);
5. Order Setting Initial Case Management conference and ADR Deadlines filed 05/16/2012 (ECF #2);
6. Civil Standing Order for U.S. Magistrate Judge Nathanael Cousins filed 05/16/2012 (ECF #2-1);
7. Content of Joint Case Management Statement filed 05/16/2012 (ECF #2-2);
8. Plaintiff BitTorrent, Inc.'s Certification of Interested Parties filed 05/16/2012 (ECF #3);
9. Report on the Filing or Determination of an Action Regarding a Patent or Trademark filed 05/17/2012 (ECF #5);
10. ECF Registration Information Handout;
11. Guidelines; and
12. Notice of Assignment of Case to a United States Magistrate Judge for Trial.

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Pursuant to the Court's Order on BitTorrent, Inc.'s Administrative Motion for Substituted Service of Summons and Complaint (Dkt. 28) and the Court's Order on BitTorrent, Inc.'s Administrative Motion for Extension of Time to Complete Service of Summons and Complaint and Extension of Associated Case Management Deadlines (Dkt. 31), the above-listed documents were sent on January 17, 2014 as follows:



(BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Cooley LLP for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by FedEx for overnight delivery.

and also on January 21, 2014:



(BY ELECTRONIC MAIL) I am personally and readily familiar with the business practice of Cooley LLP for the preparation and processing of documents in portable document format (PDF) for e-mailing, and I caused said documents to be prepared in PDF and then served by electronic mail to the parties listed below.

on the following party in this action:

BITTORRENT MARKETING GMBH

c/o

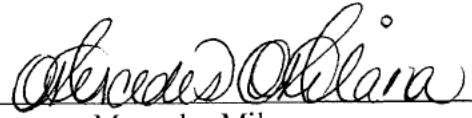
Christoph Hoppe
Kreuzkamp & Partner
Ludenberger Straße 1A
D-40629 Düsseldorf Germany
Tel: +49 (0) 211 239408-23
Fax: +49 (0) 211 239408-88
Email: hoppe@kreuzkamp.com

On January 21, 2014, I requested Proof of Delivery from FedEx confirming successful delivery by Overnight Mail. Attached hereto as Exhibit A is a true and correct copy of such Proof of Delivery indicating that the documents were delivered to the receptionist/front desk at Ludenberger Strasse 1A, Dusseldorf, DE 40629 on Monday January 20, 2014 and signed for by M. Schreiner.

///

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1 Executed on January 29, 2014, at San Francisco, California.

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Exhibit A



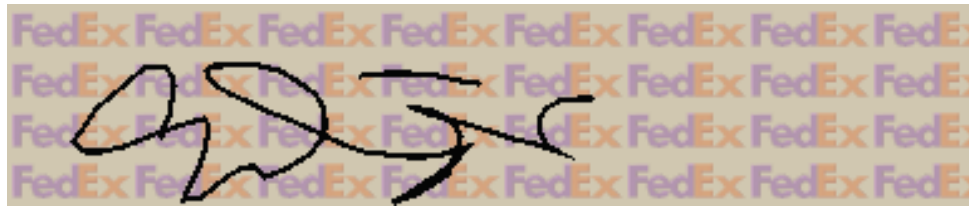
January 21, 2014

Dear Customer:

The following is the proof-of-delivery for tracking number **797667917741**.

Delivery Information:

Status:	Delivered	Delivered to:	Receptionist/Front Desk
Signed for by:	M.SCHREINER	Delivery location:	LUDENBERGER STRASSE 1A DUSSELDORF, DE 40629
Service type:	FedEx International Priority	Delivery date:	Jan 20, 2014 11:16
Special Handling:	Deliver Weekday		



Shipping Information:

Tracking number:	797667917741	Ship date:	Jan 17, 2014
		Weight:	3.2 lbs/1.5 kg

Recipient:
CHRISTOPH HOPPE
KREUZKAMP PARTNER
LUDENBERGER STRASSE 1A
DUSSELDORF, DE 40629 DE

Shipper:
MERCEDES MILANA
COOLEY LLP
101 CALIFORNIA STREET
5TH FLOOR
SAN FRANCISCO, CA 94111 US
311896-20138-11177

Reference

Thank you for choosing FedEx.

Service of Process:

[5:12-cv-02525-EJD Bittorrent,
Inc. v. Bittorrent Marketing GMBH](#)

ADRMOP,AO279

U.S. District Court**California Northern District****Notice of Electronic Filing**

The following transaction was entered by Crittenden, John on 1/29/2014 at 5:03 PM PST and filed on 1/29/2014

Case Name: Bittorrent, Inc. v. Bittorrent Marketing GMBH

Case Number: [5:12-cv-02525-EJD](#)

Filer: Bittorrent, Inc.

Document Number: [32](#)

Docket Text:

SUMMONS Returned Executed by Bittorrent, Inc.. Bittorrent Marketing GMBH served on 1/20/2014, answer due 2/10/2014. , CERTIFICATE OF SERVICE by Bittorrent, Inc. re [25] Summons Reissued (Crittenden, John) (Filed on 1/29/2014)

5:12-cv-02525-EJD Notice has been electronically mailed to:

John Paul Oleksiuk jpo@cooley.com, jderosier@cooley.com, macgregorjm@cooley.com

John W. Crittenden jcrittenden@cooley.com, calendarreq@cooley.com, jpo@cooley.com, mmilana@cooley.com

5:12-cv-02525-EJD Please see [Local Rule 5-5](#); Notice has NOT been electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\fakepath\2014-01-29 Proof of Service re Summons.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=1/29/2014] [FileNumber=10354899-0]
[3e16b9258587a7a9a9ac5639ebca2c7c4715de205257a12421edd17423be90796c59
c9fd4731574c1eb96052bdc2effdad582c488bdac0787bf7ea398c41c172]]